THE CORPORATION JOURNAL

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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

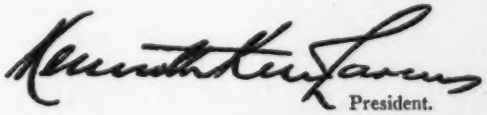
The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal with members of the bar, exclusively.

THE EXTRA SESSION OF CONGRESS

On Monday, April 15, 1929, Congress meets in special session pursuant to the President's call. Measures modifying the tariff and providing for farm relief are practically certain of enactment. The extent to which other legislation will be considered and carried through is problematical at this writing but the entire range of legislative action will be open to the Congress in its discretion. The Corporation Trust Company will cover the extra session with its regular Congressional Service as usual, and, in addition, will render a Special Service covering tariff revision and aid to agriculture as described on pages 396-397 herein.

AMENDMENT OF DELAWARE CORPORATION LAW

A bill amending in numerous particulars the Delaware Corporation Law is about to become law, we believe. When enacted, the amendments will be issued by us in a pamphlet which will be mailed on request.



President.

THE CORPORATION JOURNAL

Edited by John H. Sears of the New York Bar.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve the Journal in a permanent file, a special ring binder will be furnished at cost ($2) and thereafter, before mailing, each copy will be punched to fit the binder.

Contents for April

Better Protection for Foreign than for Domestic Purely Local Corporations

(Completing the article on the above subject begun in the March issue)

Another illustrative case is that of Wall vs. Rolls-Royce of America, Inc., 4 F. (2d) 333 (C. C. A. 3d, 1925). Herein a United States Circuit Court sustained an injunction at the instance of the well known automobile company against the use of the name "Rolls-Royce" in connection with the sale of radio tubes by an individual doing business under the name "Rolls-Royce Tube Co." There was, of course, no element of competition whatsoever, but the court said "* * * it is quite possible that the use of such a name might lead third parties to credit the plaintiff's business on account of its name of "Rolls-Royce" with an unwarranted financial reliability, and if such assumptions eventually proved unfounded the name of "Rolls-Royce" would suffer accordingly. * * * And if this Rolls Royce radio tube proved unsatisfactory, it would sow in his (the purchaser's) mind at once an undermining and distrust of the excellence of product which the words "Rolls Royce" had heretofore stood for."

Hudson Motor Car Co. vs. Hudson Tire Co., 21 F. (2d) 453 (United States District Court, District of New Jersey, 1927) likewise illustrates the argument.

Contrast with the foregoing the following decisions by New York state courts: Charles S. Higgins Company vs. Higgins Soap Co. (1895), 144 N. Y. 462, 39 N. E. 490. Corning Glass Works vs. Corning Cut Glass Co. (1910), 197 N. Y. 173, 90 N. E. 449. The Eastern Construction Company vs. Eastern Engineering Corporation (1927), 246 N. Y. 459. It will be observed that the state courts will deny relief when plaintiff and defendant are either not in the same business or are not directly in competition with one another. A recent magazine article ("Protection of a Trade Name in New York State" by Bertram F. Willcox of the New York Bar, St. John's Law Review, December, 1928) reviews these decisions, draws attention to the very recent holding of the Appellate Division of the New York Supreme Court in Long's Hat Stores Corporation vs. Long's Clothes, Inc. (New York Law Journal, November 28, 1928) granting relief to a company engaged in selling hats and haberdashery against a retail clothing store, and concludes "that the law, governing the protection of trade names is still in a formative stage, but that the present strong tendency, in the Federal courts and in the New York State courts alike, is to depart from the classical requirement of actual competition, in any strict sense, between the plaintiff and defendant when the former seeks to enjoin the latter from using a similar name. We may further conclude that this tendency is more clearly marked in the decisions of the Federal courts than in the courts of this state (New York)."

In states other than New York the subject is likewise in confusion and in some jurisdictions there is a dearth of precedent altogether. It

is clear therefore that well advised counsel will seek Federal jurisdiction for the corporate complainant where possible and, looking far ahead, will secure its charter, if its activities are to be restricted to a single city or to a single state, in a foreign state so as to secure to it the greater possibility, should occasion arise, of getting its case into the United States courts, on the ground of diversity of citizenship.

Domestic Corporations

Arkansas.

Promissory note paid-in for stock; validity of the stock issued therefor. The Constitution of Arkansas provides that "No private corporation shall issue stocks or bonds, except for money or property actually received or labor done. . . ." The Supreme Court of Arkansas says, in the instant case, that it has held that a promissory note given for the purchase price of corporate stock is neither money nor property actually received within the meaning of the Constitution and is void, but "that there could be an innocent purchaser of such a note, and if that is true, it could not be said that the note was absolutely void." The court now states that it may be said to be the law of Arkansas that a note so given would be valid in the hands of an innocent purchaser for value. This leads up to the real question here, such being whether or not the stock issued for the note is valid in the hands of an innocent purchaser for value. The court says that the rule stated as to a note paid in for stock should have equal application to the stock issued for the note, i. e., an innocent purchaser of such stock is entitled to have the same transferred to him on the records of the corporation. Park vs. Bank of Lockesburg et al., 11 S. W. (2d) 483. Lake, Lake & Carlton, of De Queen, for appellant. Steel & Edwards, of De Queen, for appellees.

California.

After making contract with a corporation its corporate capacity may not be denied in suit brought by the corporation on the contract. In this case, into the merits of which we need not go, the District Court of Appeal, First District, Division 2, California, says: "The court below properly found the corporate existence of Dimou & Co., Inc., without its charter being offered in evidence. Defendant contracted with the company as a corporation, addressed letters to it as a corporation, and in her answer alleged special terms of the contract made with that company as a corporation. Having made the contract with the corporation, she cannot deny its corporate capacity, when it undertakes to sue on that contract." Smith vs. Pittler, 272 P. 789.

John H. Crabbe, of San Francisco, for appellant. William Klein, of San Francisco, for respondent.

Personal liability of stockholders of a corporation owning vessel in connection with loss or damage incident to the operation thereof. The Circuit Court of Appeals, Ninth Circuit, held in this action (26 F. (2d) 21, digested in THE JOURNAL for October, 1928, page 246), that the liability of stockholders of a California ship corporation is restricted to the limitation prescribed by the Federal statutes on the owner of a vessel, and that such liability is not governed by the provision of the California constitution relating to liability of stockholders generally, on the ground that for the purposes of the Federal statutes (encouragement of ship building) the stockholders of a corporation owning a vessel are "owners". The United States Supreme Court affirms, March 5, 1929. Flink vs. Paladini, et al. (Not yet officially reported.)

Canada.

Provincial "Blue Sky" law is in no way applicable to a Dominion company. The Manitoba Sale of Shares Act, C.A.M. 1924, c. 175, (repealed and superseded by the Municipal and Public Utility Board Act, 1926 (Man.), c. 33, s. 179), provides inter alia that no company, however or wherever incorporated, shall sell (which includes the seeking and taking of stock subscriptions) stock or securities without first obtaining a certificate and a license from the proper authorities. The Dominion Companies Act, R. S. C., 1927, c. 27, s. 58 (2), provides for the sale, etc., of the stock or securities of any corporation organized thereunder throughout the Dominion. The Judicial Committee of the Privy Council affirming the judgment of the Manitoba Court of Appeals holds the statutes in question ultra vires of the Province saying that it is well established that no Provincial Legislature may so legislate as to impair the status and essential capacities of a Dominion company in a substantial degree, and that "in their Lordships' view the statutes now under consideration do so impair the status and powers of such a company." Attorney-General of Manitoba vs. Attorney-General of Canada, [1929] 1 D. L. R. 369. R. W. Craig, K. C., and F. Eaton, for A.-G. Man. and A.-G. Alta. E. Bayley, K. C., for A.-G. Ont. L. Cannon, K. C. and A. Geoffrion, K. C., for respondent.

Colorado.

Example of failure of corporation to file complete annual report rendering officers and directors liable for corporation's debts for preceding year. The statutes of Colorado provide that if a corporation fails to file an annual report, as thereby required, the officers and directors of the corporation are jointly and severally and individually liable for all debts contracted during the year next preceding the time when such report should have been filed. One of the requirements is that the report shall give "such other information as will show with

reasonable fullness and certainty the condition of its real and personal property, and the financial condition of said corporation . . . at the date of filing such report." The corporation of which the plaintiffs in error here are officers and directors, in answering the questions covered by the above requirement as embodied on the blank form provided by the secretary of state limited itself to a statement as follows: "The year's work does not show a profit above running expenses." Action is against the defendants as officers and directors to recover a debt due from the corporation. The court below found for the plaintiff. The Supreme Court of Colorado in affirming the judgment says that the document filed as an annual report was not in compliance with the statute and completely ignored the plain, clear, unambiguous, mandatory statutory requirements. Beeler et al. vs. Cities Service Oil Co. 273 P. 21. E. P. Hudson, of Denver, for plaintiffs in error. Lowell White, of Denver, for defendant in error.

Missouri.

Corporate purposes and the exercise thereof. This is an original proceeding in quo warranto brought by the Attorney-General of Missouri to oust the respondent Missouri corporation of its corporate franchise on the ground that the corporation has engaged in activities beyond its corporate powers. The first contention, in effect, was that a corporation may not be granted the power to carry on more than one of the purposes provided by the several clauses of section 10151, Revised Statutes of 1919, except that two or more of such purposes may be included if such powers are interrelated, and that as the respondent's charter included several unrelated purposes it was void. It was further contended that even though the charter be valid some of the activities of the corporation were not within the expressed or implied powers granted to it, and that some of the powers had been exercised to an entirely unwarranted degree. The Supreme Court of Missouri, in banc, adopting a special commissioner's report, finding for the respondent corporation, holds that any or all of the statutory powers may be granted to a corporation and calls attention to the fact that for the last twenty years the secretary of state, by whom charters are granted, has so construed the particular section referred to and related sections. The court further holds that all of the activities engaged in by the corporation (we do not itemize these as to do so would serve no good purpose here) were within its expressed or implied powers, and that if a corporation has been granted the power to do a certain thing or such power is to be implied, in such a proceeding as this, brought by the state to oust the corporation, the extent of the exercise of the power is "a problem to be determined by the good faith judgment of respondent's directors, and it was not, in our opinion, a matter of any concern to the state granting the charter." Gentry, Atty. Gen. vs. Long-Bell Lumber Co., 12 S. W. (2d) 64. North T. Gentry, Atty. Gen., Chas. H. Mayer, of St. Joseph, and R. R. Brewster, of Kansas City, for informant. Cyrus Crane, J. A. Guthrie, and George H. Combs, Jr., all of Kansas City, for respondent.

New Jersey.

Endorsement of check payable to corporation by president is invalid, generally. The check here in question, payable to a corporation, was endorsed to the order of another corporation by the former's president by writing the corporation's name and thereunder signing his own name followed by the word "President". The check was paid by the bank on which it was drawn. The drawer now sues the bank for the amount of the check asserting that it was paid on an unauthorized endorsement. The Court of Appeals and Errors of New Jersey affirms the judgment below for the plaintiff, holding that there is no statutory authority vesting in the president of a corporation the power to endorse checks as president in the name of the company, that he has no such implied power, and that in the absence of a by-law provision or resolution of the board of directors giving him such authority, an endorsement by him is unauthorized and invalid. Economy Auto Supply Co., Inc. vs. Fidelity Union Trust Co., 144 Atl. 30. Hood, Lafferty & Campbell, of Newark, for appellant. Saul J. Zucker, of Newark, for respondent.

New York.

No personal liability runs to officer of corporation signing a worthless check on behalf of the corporation. In our digest of People vs. Fleishman (City Magistrate's Court of New York City, City Magistrate Rudich) in the March, 1929, JOURNAL, page 370, we stated, in connection with Section 1292-a of the Penal Law, as amended by Chapter 678 of the Laws of 1927, that: "The court further holds that there is nothing in the act to indicate that when the Legislature used the word 'person' in the section referred to above it intended to include within the meaning of the term, 'a corporation', and that there is evidence to the contrary." This statement is error. Actually the court intimated that when the legislature used the word "person" it included within the meaning of that term a corporation and that the corporation could be held liable under that section (making it a misdemeanor to make, draw, utter, etc., a check without having sufficient funds in bank to provide for payment), though the officers of the corporation could not be held liable.

North Carolina.

Personal liability of directors of a corporation for misrepresentations by employee-salesmen thereof in connection with the sale of its stock. The holding of the Supreme Court of North Carolina here is, in effect, that in the absence of a showing of conspiracy a director of a corporation is not personally responsible and liable for the fraudulent representations made, not in the presence of such director, by salesmen as agents and employees of the corporation in their successful efforts to procure subscriptions for the stock of the corporation. Edwards vs. Southern States Finance Co. et al., 146 S. E., 89. W. B. Love, of Monroe, for appellant Newsome. J. E. Sikes, of Monroe,

for appellant J. E. Ashcraft. Armfield, Sherrin & Barnhardt, of Concord, for appellants Ashcraft, Cherry & Rhyne. Van & Miliken, of Monroe, and H. B. Adams, of Waxhaw, for appellee.

Oklahoma.

Unregistered note in hands of nonresident purchaser is inadmissible as evidence in action thereon in Oklahoma court. The statutes of Oklahoma provide that any person owning a "note of any duration of over eight months" may register it with the treasurer of the county in which the owner resides and pay a tax, for five years, equivalent to 2% of the face value thereof. Any such note that has not been registered and in respect of which the tax has not been paid is not admissible as evidence in any Oklahoma court. The note involved in the instant case, payable in installments over a greater period than eight months, was executed by a resident of Oklahoma in favor of the Nash Motor Company of Ardmore, Okla., a copartnership. The note was at once assigned to the plaintiff, a New York corporation, and forwarded to it at its place of business in New York at which place of business the note was made payable. There is no evidence that the note was registered and the tax paid thereon. This is an action brought by plaintiff in an Oklahoma district court against the maker of the note and the members of the copartnership assignors, to collect the amount due on the note. The defense was that the note offered in evidence was incompetent under the above mentioned provisions of law. The judgment below for defendants is affirmed by the Supreme Court of Oklahoma, the court saying that the note became taxable and its situs for tax purposes fixed immediately after its execution and delivery to the payee, in Oklahoma, and because of the failure to register and pay the tax the note is inadmissible as evidence. Commercial Investment Trust Co. vs. Farve et al., 273 P. 226. E. W. Schenk, of Ardmore, for plaintiff in error. H. A. Stanley and Ledbetter & Brown, all of Ardmore, for defendants.

South Dakota.

Stockholder's liability for unpaid part of subscription does not run to subsequent purchaser of stock for value, and without notice. The Supreme Court of South Dakota, on rehearing of this cause, modifies its "opinion as originally published (207 N. W. 536, reported in The Corporation Journal for May, 1926, at page 177), and holds that to the extent, and to the extent only, that any of the defendants who purchased their stock in the open market, for value and without notice that the corporation had not been paid in full for the stock when it was issued, such defendants are not liable for the unpaid balance due for such stock." The court says in support of this conclusion that it is founded on the "more modern trend of authority." Gray Const. Co. vs. Hyde, et al., 222 N. W. 675. Bailey & Voorhees, and Kirby, Kirby & Kirby, all of Sioux Falls, Cheever & Cheever, of Brookings, and E. W. McLaughlin, of Hayti, for appellants. Case & Case, of Watertown, for respondent.

Texas.

Corporations may issue stock for letters patent as for "property actually received." The Constitution and laws of Texas provide that "no corporation shall issue stock or bonds except for money paid, labor done, or property actually received." The state authorities have maintained for many years that stock of a corporation may not be issued for letters patent since such would not constitute "property actually received." The Supreme Court of Texas holds that this interpretation of the constitutional and statutory provisions is erroneous and that stock may in fact be issued for letters patent. "The question of value, of course, is not involved; that is wholly for the determination of the Secretary of State." Atlas Trailers and Water Mufflers, Inc. vs. McCallum, Secretary of State. (Not yet officially reported.)

County in which individual may be sued. The Texas statutes provide that an inhabitant of the state may be sued in the county of his domicile only, except that "If a person has contracted in writing to perform an obligation in a particular county, suit may be brought either in such county or where the defendant has his domicile." The Court of Civil Appeals of Texas (El Paso) holds that the exception does not apply to the case of the maker of a note in connection with a conditional sales contract wherein it is agreed that the note will be payable at such place as the seller or his assignee may designate, and that the maker of such a note may be sued thereon in the county of his domicile only, and not in another county wherein is located the place of payment designated by the seller or his assignee. General Motors Acceptance Corporation vs. Christian, 11 S. W. (2d) 620. McGown & McGown, of Fort Worth, for appellant. Adams & Jones, of Gainesville, for appellee.

Foreign Corporations

Missouri.

Removal by a railroad of an accident case from a state to a Federal court. We will not review the steps taken to get this cause before the United States Supreme Court. An employee of the petitioner railroad was killed in Michigan in the performance of his duties. At the time of his death his wife was living with him in that state. Soon thereafter she removed to Missouri. As administratrix she brought an action in a Missouri Circuit Court for damages. The railroad is a Michigan corporation. No part of its line runs in Missouri; it has not consented to be sued there; has never been admitted to do business there; and has never done any business there, except to solicit freight in interstate commerce over its lines in other states, for which purpose it maintains an office in St. Louis. Service of summons was made on the agent in charge of that office. The railroad sought unsuccessfully to have the cause removed to a Federal Court. The United States Supreme Court, on February 18, 1929, reverses the judgment of the Supreme Court of Missouri which denied petitioner's

Special Congressional

FOR THE EXTRA SESSION

The extra session of the 71st Congress—the first legislative session under President Hoover—may well prove to be one of the most important of recent years.

Even if confined, as the president has indicated a wish, to consideration of farm relief and tariff legislation, those two subjects touch the nation's business activities at so many different points that every business man must be concerned.

Measures for farm relief will automatically react on all interests that buy from or sell to farmers. In tariff revision it is history that once the subject is opened all schedules receive consideration.

The Corporation Trust Company therefore offers, for this extra session and apart from its regular Legislative Service, a Special Service on the double subject of Tariff and Agricultural Relief. The subscription rate will be $100 for the session.

This Special Service will cover its two subjects in the manner of our regular Legislative Service (including the Daily Letter) as described below, except that only Administration bills will be reported on.

Congressional Legislative Service Consists of

(1) Advice of the introduction of bills of interest.
(2) A copy of the bill as introduced.
(3) Notification of all legislative action as taken by either House issued in a systematic method to facilitate quick reference and examination.
(4) Copies of amendments, amended bills, and substitutes.
(5) Reports of standing and conference committees when printed and available.
(6) Advice of the President's action and copy of the law.
(7) The Daily Letter (described opposite).

DAILY LETTER

The Daily Letter which is a part of both classes of Service is mailed under first class postage each day. It gives concise accounts of the progress of legislation, forecasts of the trend of proposed legislation, outlines of testimony submitted at committee hearings and other notes on the happenings of the day. The Daily Letter may be subscribed for separately if desired.

prayer that the judges of the Missouri Circuit Court be enjoined from acting in the suit commenced by the widow-administratrix. The court holds, in effect, that to compel the railroad to defend in a state remote from that in which the accident occurred and in which both parties resided at the time would be an unreasonable burden on interstate commerce and violative of the commerce clause of the Federal constitution. Michigan Central Railroad Co., Petitioner, vs. Mix et al. (Not yet officially reported.)

New York.

On "doing business"; solicitation of business by salesman on commission; occasional sale of samples. Defendant is a corporation, foreign to New York, with a factory in Virginia where it manufactures furniture. Floor space in New York for the exhibition of samples is furnished free to the company by an affiliated concern. Part of the floor space is occupied by a soliciting salesman and his assistants. He is paid a commission on orders taken by him, all of which are sent to Virginia for acceptance. The telephone is at his expense and is in his name. On the office door the company's name appears as it does in the building directory. The company has two New York bank accounts "but their purpose or use in practice does not appear in the record." The salesman on rare occasions sells the samples but the business so done amounts only to about ½ of 1 per cent of the aggregate orders taken by him. He keeps no accounts with customers and makes no collections except occasionally of overdue accounts. The president and vice-president visit New York ten or eleven times a year, to solicit business, to adjust accounts, and to discuss business with the salesman. Summons was served on the president while in New York on one of his visits in connection with a contract the details of which were arranged in New York by the vice-president but which was confirmed and signed in Virginia by the company's officers. The United States Circuit Court of Appeals, Second Circuit, affirms the order below dismissing the action since service was on the company's president while he was temporarily in New York at a time when the defendant was not doing business there. Davega, Inc. vs. Lincoln Furniture Mfg. Co., Inc., 29 F. (2d) 164. Moses, Nehrbas & Tyler, of New York City (Henry C. Moses, of New York City, of counsel), for plaintiff in error. Louis Winer, of New York City (J. P. Buchanan, of Marion, Va., and James J. Jackman and Henry J. Greenstein, both of New York City, of counsel), for defendant in error.

Service of process directed to foreign corporation on manager of corporation's New York subsidiary held good. The defendant here is a Virginia corporation. It transacts business in New York through its New York subsidiary only. The names of the two corporations are identic. Service of process against the parent Virginia corporation was made on the manager of its New York subsidiary. The United States District Court for the Southern District of New York holds the summons good. After stating that each such case must be determined in the light of its particular facts and conditions the court

finds, here, that the subsidiary was a shell merely, nothing more than a branch office or department of the parent corporation, that the separate corporate entity was ignored completely, that the subsidiary was so directed and managed by the parent that the former was deprived, virtually, of any independent corporate existence or financial responsibility, that the subsidiary was advertised as a branch of the parent, that because of identity of name customers dealing with the subsidiary were led to believe they were dealing with the parent, and that, in general, not even the forms, much less the substance of independent entities were preserved. American Chain Co. Inc. vs. Stewart-Warner Speedometer Corporation (a Virginia corporation) and Stewart-Warner Speedometer Corporation (a New York corporation), U. S. Daily, March 9, 1929, page 8. Frederick S. Duncan, for the plaintiff. Darby & Darby, for the defendants.

Ohio.

Corporate entity of subsidiaries ignored when facts show that such are mere adjuncts or agents of parent. It is stated that all of the capital stock of General Motors Truck Company, doing business in Ohio and having an established branch and place of business in Toledo, is owned by the General Motors Truck Corporation, a Delaware corporation; that all of the latter company's stock is owned by Yellow Truck & Coach Mfg. Co., a Maine corporation; that a majority of the voting stock of the latter company is owned by General Motors Corporation, a Delaware corporation; and that all the stock of Chevrolet Motor Ohio Corporation is owned by General Motors Corporation. In an action against the General Motors Corporation and the several other companies service of process was made on the general manager of the General Motors Truck Company in behalf of all the defendants, and on the manager of Chevrolet Motor Ohio Company, in behalf of General Motors Corporation. It is alleged that the foreign corporation defendants are not doing business in Ohio and have no places of business or agents in the state and that therefore the services of process were not good. Motions to quash the services are overruled by the United States District Court, N. D. Ohio, W. D., the court holding the services good since because of the stock ownership or control and of the interrelated business, supported by newspaper, sheet and pamphlet advertising implying a complete unity of business, and because of other facts that are apparent, the separate corporate entities must be ignored and considered as a mere fiction as the subsidiaries are no more than adjuncts or agents of the parent. The court says that each such case as this must be considered as sui generis. Industrial Research Corporation vs. General Motors Corporation et al., 29 F (2d) 623. Owen & Owen, of Toledo, for plaintiff. Smith, Beckwith, Ohlinger & Froehlich, of Toledo, for defendants.

Pennsylvania.

Capital stock tax on foreign automobile mortgage corporation. The statutes of Pennsylvania provide for a tax on the capital stock of

domestic corporations and of foreign corporations doing business or having capital or property employed in the state. In general effect the tax on the capital stock of a foreign corporation is measured by the tangible property of such corporation which it uses within the state in the transaction of its corporate business or the exercise of some corporate activity. The defendant here, a foreign corporation, admits doing business in the state. Its principal business is to take assignments of bailment leases from lessor dealers in automobiles who have procured such leases, together with promissory notes, from customers desiring to purchase cars on the instalment plan. The corporation in addition to having in its possession at the close of the year for which report was made a certain number of cars of which it had taken possession on default by the lessees under the bailment leases, had title at such time, through assignments to it of such bailment leases, to a much greater number of cars not in its possession, but located in Pennsylvania. The Court of Common Pleas of Dauphin County sustains the state in its contention that these automobiles represent tangible property used in its business in Pennsylvania against defendant's contention that the amount involved represents investments in accounts receivable and therefore is not taxable as the situs of the intangibles is without the state. The court holds that unless the rights of purchasers or creditors intervene the transaction, which was originally a bailment, remains a bailment, one of the incidents of which is the right to take possession of the property when the contract is violated. The court notes that the law of Pennsylvania as to bailment is different from the laws in connection therewith of many of the other states. Commonwealth vs. The Motors Mortgage Corporation, 15 Dep. Reports 227 [1929].

Taxation

California.

Franchise tax on domestic and foreign corporations based on net income. Pursuant to constitutional amendment a California law has been enacted imposing on domestic and foreign corporations an annual franchise tax measured by net income, for the next preceding calendar or fiscal year, derived from business done within the state. Generally, net income is computed as under the Federal income tax law; if the entire business is transacted in California the tax is measured by the entire net income; otherwise, the tax is measured by the part of the net income derived from business done in the state such part being determined by a flexible method or rule of allocation "as is fairly calculated to assign to the state the portion of net income reasonably attributable to the business done within this state and to avoid subjecting the taxpayer to double taxation." The rate is 4 per cent; minimum tax of $25. An offset against the amount of the tax is allowed in the amount of taxes paid on real and personal property to any political subdivision of the state the aggregate offset, however, not to exceed 75 per cent of the "income tax," and in no event is the taxpayer entitled to offset more than 10 per cent of its real property taxes.

The tax is in lieu of the former tax on corporate franchises. Regularly return and one-half of tax are due on or before the fifteenth day of the third month following the close of the taxable year, calendar or fiscal. This year all liable corporations must make return (for varying periods of time) and pay half of tax on or before May 15.

Illinois.

Franchise or license tax on domestic and foreign corporations held valid. Section 105 of the Illinois Corporation Act provides for an annual franchise tax or license fee on domestic and foreign corporations of 5c on each $100 of the proportion of its issued capital stock, or amount to be issued at once, represented by business transacted and property located in the state. It was contended, here, that inasmuch as the state included interstate as well as intrastate business transacted by the plaintiffs-appellants (both domestic and foreign corporations) in the factor "business transacted in the state," a part of the tax was imposed on interstate business and to that extent is a direct burden on interstate commerce and so is invalid. The Supreme Court of Illinois, relying on its decision in American Can Co. vs. Emmerson, 288 Ill. 289, approved and followed in Hump Hairpin Mfg. Co. vs. Emmerson, 293 Ill. 387, affirmed by the United States Supreme Court (258 U. S. 290), sustains the tax as computed by the state, saying: "The court held in that case (Hump Hairpin, etc., supra) that the tax directly imposed upon proceeds of interstate commerce business was only one of three factors used in computing the tax, the two other factors being the amount of property in Illinois and the amount of proceeds from sales to residents of Illinois, and the conclusion of the court was that the tax, so far as interstate commerce was concerned, was incidental, remote and unimportant and was not unconstitutional or invalid." Illinois Iron & Bolt Co., et al. vs. Emmerson, Secretary of State, 164 N. E. 667. Fyffe & Clarke (Colin C. H. Fyffe, of counsel), of Chicago, for appellants. Oscar E. Carlstrom, Atty. Gen. (B. L. Catron, of Springfield, of counsel), for appellee.

North Dakota.

Allocation of income to the state for purposes of the state corporation income tax. The appellant here is a foreign corporation doing business in North Dakota. Such business consists of marketing refined oils in the state, which oils are all produced and refined elsewhere than in North Dakota. The corporation is subject to the state income tax on its income arising from business done within the state. The statute provides for an allocation to the state for purposes of the tax of a percentage of a corporation's total income from all sources, such percentage being determined by comparing the amount of tangible property and business within the state to the total amount of tangible property and total business wherever located or done. The state authorities contend that a portion of the income made by the oil company in the business of producing crude oil from the ground, and in the business of manufacturing and refining crude oil should be allocated to North Da-

kota, though it neither produces nor refines any oil in the state, on the theory that plaintiff's business should, for the purpose of taxation, be regarded as a unit in the production, transportation, refining, and marketing of oil. The U. S. Circuit Court of Appeals, Eighth Circuit, reversing the court below, is of the opinion that if such an interpretation of the statute is correct the statute would be unconstitutional but believes that the law gives no warrant for such interpretation, and holds that in the allocating formula "business within the state" means the character of business actually done in the state—in the instant case, selling oil in the state. Standard Oil Co. of Indiana vs. Thoresen, Tax Commissioner et al., 29 F. (2d) 708. E. B. Cox, of Bismarck (C. W. Martyn and F. E. Packard, both of Chicago, Ill. and O'Hare, Cox & Cox, of Bismarck, on the brief), for appellant. C. J. Lynch, of Bismarck (T. H. H. Thoresen, of Bismarck, on the brief), for appellees.

Oklahoma.

Taxation of personal property of corporations in different counties of the state. The Oklahoma statutes provide that if a person is doing business in more than one county the property existing in any one of such counties is to be listed and taxed in that county. A corporation in making return is required to show the location of its real estate and tangible personal property, listed and assessed separately in its name. The Supreme Court of Oklahoma (reversing the judgment below) holds that the effect of the foregoing provisions is to render the personal property of a corporation located in a county in which it is doing business, other than in the county in which its principal office or place of business is located, taxable in such other county, such separately taxed property being excluded from the basis for the "moneyed capital, surplus, and undivided profits" unit tax assessed in the county of domicile. The question then is what constitutes "doing business" in a county other than the home county. The court says that this "imports some higher degree of permanency of the property when used in connection with such business than which might barely subject the property of a nonresident to taxation in a given state." A continuity of conduct is implied such as might be evidenced by the investment of capital coupled with the maintenance of an office or place of business for the transaction of business, and those incidental circumstances which result in a portion of the corporation's property being incorporated in the bulk of the property of the county and used there for some substantial period of time in such manner as other property of like character in the county is used. In the instant case there was no evidence to show how long the property had remained in the county where assessed, or the use to which it was there devoted. Standard Paving Co. vs. County Board of Equalization, et al., 273 P. 201. Allen, Underwood & Smith, of Tulsa, for plaintiff in error. C. L. Clearman, Co. Atty., and T. R. Wise, both of Sayre, for defendants in error.

South Carolina.

Chain store license tax held unconstitutional. Section 24 of Act

No. 574, 1928, amending Act. No. 73, 1927, South Carolina, provides "That any person, firm, corporation or association operating or maintaining within this State, under the same general management, supervision, or ownership, five or more stores or mercantile establishments, shall pay an annual license tax of $100, in addition to all other license fees or charges, for each store or mercantile establishment in the State, for the privilege of operating or maintaining such stores or mercantile establishments." The Court of Common Pleas (South Carolina, Richland County), after pointing out that if the number of stores be less than five no special license tax is imposed whereas if there be five or more stores the tax applies to each of the five or more, holds the taxing section to be violative of both the Federal and State constitutions, finding that the classification is unreasonable and arbitrary and that the right to equal protection of the laws is denied. The plaintiffs here are variously domestic and foreign corporations. Southern Grocery Stores, Inc., et al. vs. State Tax Commission, and Great Atlantic and Pacific Tea Co. vs. Same. (Not yet officially reported.)

Washington.

Original qualification fees based on authorized capital stock or increases thereof, and annual license fees having the same basis held invalid as to foreign corporations. Statutes of Washington are involved. Original qualification fees for foreign corporations are based on authorized capital, with like fees, less amounts already paid, for increases in authorized capital. Annual license fees for foreign corporations are likewise based on authorized capital. These fees are on a sliding scale basis with a maximum of $3,000 in each case. Domestic corporations are subject to the same fees computed on the same basis. The United States District Court, W. D. of Washington, S. D., in the instant case, held the taxing statutes constitutional when brought in question by the appellant here, a Maine corporation engaged in interstate commerce but doing intrastate business in Washington. (Cudahy Packing Co., etc., 24 F. (2d) 124, THE CORPORATION JOURNAL, May, 1928, page 187). The United States Supreme Court (February 18, 1929) reverses the judgment below saying that unless saved by the $3,000 maximum the Washington enactments are subject to the same constitutional objections pointed out in Looney vs. Crane Co., 245 U. S. 178 (Texas statutes involved), and that as to the maximum provision that question was settled by Alpha Portland Cement Co. vs. Mass., 268 U. S. 218 wherein it was held that "The amount demanded is unimportant when there is no legitimate basis for the tax." Cudahy Packing Co. vs. Hinkle, Secretary of State, et al., 49 S. Ct. 204.

Wisconsin.

Foreign corporation privilege tax based on authorized capital stock held to be unconstitutional. The court below said: "The sole question for consideration is as to whether this state can constitutionally exact a fee upon a foreign corporation's authorized but unissued stock," —for such is the effect of Section 226.02 (7) of the Wisconsin Statutes,

1927. The court held (see digest of the case in The Journal for October, 1928, page 260) that the statutory provision in question violates the Fourteenth Amendment to the Federal constitution. The Wisconsin Supreme Court affirms the judgment below finding (relying on Air-Way Corporation vs. Day, 266 U. S. 71) that the equal protection clause of the 14th Amendment is violated, that the statute offends against the commerce clause (relying on Cudahy Packing Co., page 403 herein), and that since the effect is to tax property in interstate commerce the statute is unconstitutional because violative of the due process clause. The Borden Company vs. Dammann, Secretary of State, not yet officially reported.

Income tax; income apportionable to Wisconsin when business is carried on both within and without the state. The Wisconsin income tax law provides that in the event that business is carried on both within and without the state the tax is imposed on the income derived from business transacted and property located within the state only. "The amount of such income apportionable to Wisconsin may be determined by an allocation and separate accounting thereof, when in the judgment of the tax commission, that method will reasonably reflect the income properly assignable to this state, but otherwise" by use of a formula—the ratio method. The taxpayer here made return on the separate accounting method. It was not claimed that if this method is to be used a proper accounting has not been made, but it was asserted that this method does not reflect the true income allocable to Wisconsin. The argument (so the Supreme Court of Wisconsin says) "seems to be that, because the plaintiff company sells a large amount of its products in Wisconsin, its manufacturing profits in other states are increased by reason of the continuity of its operations and increased volume of business resulting from sales made in Wisconsin, and for that reason some of the profits derived from operations carried on without the state are attributable to intrastate operations, and so constitute income earned within the state and therefore taxable as Wisconsin income." The court, reversing the judgment below, and directing that judgment be entered in favor of the taxpayer, says: "We perceive no reason why, under the facts in this case, the profits derived from the sales operations should not be ascertained so far as plaintiff is concerned as they would be if the sales operations were conducted by a separate corporate entity." Standard Oil Co. of Indiana vs. Wisconsin Tax Com., 223 N. W. 85. Olin & Butler, Harry L. Butler, and Ray M. Stroud, all of Madison, and C. W. Martyn, F. E. Packard, and William E. O'Connor, all of Chicago, Ill., for appellant. John W. Reynolds, Atty. Gen., and Franklin E. Bump, Asst. Atty. Gen., for respondent.

Delaware Corporations Organized.

586 corporations were organized under the laws of Delaware from February 21 to March 20, as against 729 for the preceding 30-day period, and 483 for the corresponding period of one year ago.

Some Important Matters for April and May

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. The *State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ALABAMA—Annual Franchise Tax Payable April 1 but may be paid without penalty until April 30.—Domestic and Foreign Corporations.

CALIFORNIA—Corporation Income-Franchise Tax Return due on or before May 15.—Domestic and Foreign Corporations.

COLORADO—Annual License Tax due on or before May 1.—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due after April 1 and before July 1.—Domestic Corporations.

DOMINION OF CANADA—Annual Summary due between April 1 and June 1.—Domestic Companies having capital stock.

Annual Income Tax Return due between January 1 and April 30.—Domestic and Foreign Corporations.

FLORIDA—Annual List of Officers and Directors due on or before June 1.—Domestic and Foreign Corporations.

GEORGIA—Registration and Payment of License Tax due between January 1 and April 30.—Foreign Corporations.

MAINE—Annual Tax Return due on or before June 1.—Dom. Corps.

MASSACHUSETTS—Excise Tax Return due between April 1 and April 10.—Domestic and Foreign Corporations.

MONTANA—Annual Report due in April or May.—Foreign Corporations.

Annual License Tax based on net income due between June 1 and June 15.—Domestic and Foreign Corporations.

NEBRASKA—Statement to Tax Commissioner re: stockholders residing in Nebraska, due on or before April 15.—Foreign Corporations.

NEW JERSEY—Annual Tax Return due on or before first Tuesday of May.—Domestic Corporations.

NEW YORK—Annual Return of withholding agents due between January 1 and April 15.—Domestic and Foreign Corporations.

NORTH CAROLINA—Capital Stock Report to determine amount of franchise tax due between May 1 and July 1.—Domestic and Foreign Corporations.

QUEBEC—Sworn statement for Treasury Department due on or before May 1.—Domestic and Foreign Corporations.

TENNESSEE—Annual Excise Tax Report due on or before May 1.—Domestic and Foreign Corporations.

TEXAS—Annual Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.

VERMONT—List of stockholders due on or before April 5.—Domestic and Foreign Corporations.

WEST VIRGINIA—Annual Report due in April.—Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:

What Constitutes Doing Business. (Revised to July, 1928). A pamphlet containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business."

Amendments of Delaware Corporation Law—1929. These amendments make no radical changes but were passed for the purpose of clarifying and simplifying certain provisions of the law. The full text is given in this pamphlet.

Certificate of Incorporation of Pullman Incorporated. Pullman Incorporated was the first internationally known corporation to take advantage of the new features of the Delaware law as amended in 1927, and its charter will therefore be of great interest to lawyers.

Safeguarding Stock Transfers. Dealing with the many pitfalls in transferring stock on a corporation's books.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation. Revised to November, 1928.

Special Reports. When cases are decided that seem to be of some particular interest or significance in connection with the matter of doing business by foreign corporations, The Corporation Trust Company sometimes issues one of these special reports. One on the Southwest Company case is now available.

Transfer Requirements Chart. This supplement to The Stock Transfer Guide and Service shows the classifications into which requests for stock transfers are divided and how the principal requirements for each classification may be determined, either by the transfer agent or the individual desiring transfer made.